IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 558 of 2000()

OPMV.2430/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
.....

APPELLANT/PETITIONER:

A.K.SHEIK HUSSAIN,
ANATTUKATH HOUSE, RESIDING AT
NALUKETTU, KORATTY P.O.,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.V.BABY
SRI.ALOSIOUS GILBERT

RESPONDENTS/RESPONDENTS:

1.SMT.KAMARBAN SALEEM,
W/O.M.M.MOHAMMED,
14/44/1 SRINIVAS NAGAR,
MUKKA, D.K.

2.JOHN SENSILAVOS, S/O.M.P.JOSEPH,
MALIYEKKAL HOUSE, PERUMPADAPPU,
EDAKOCHI VILLAGE, ERNAKULAM DISTRICT.

3.BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD., MAIN ROAD, SURATHKAL.

BY ADV.SMT.P.A.REZIYA FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.558 OF 2000 (D)

Dated this the 6th day of July, 2007

J U D G M E N T

KOSHY,J.

Appellant claims to be an owner of tanker lorry bearing Registration No.KRD 3284. He filed application for compensation for the damages caused to the tanker lorry by filing O.P.(MV).No.2430/1994. The Tribunal found that accident occurred due to the negligence of the 2nd respondent driver of the mini lorry which hit the lorry insured by the 3rd respondent Insurance company. But since it was not proved that petitioner was the owner of the tanker lorry his claim was dismissed. Several issues were framed by the Tribunal which is as follows:

1. Whether the accident was due to the negligence of R2?
2. What, if any, is the compensation payable to the petitioner?
3. Whether R3 is liable ? Reliefs and costs.

Under Rule 379 of the KMV Rules after framing issues the Claims Tribunal should record his evidence. Since issue regarding answers was not raised specifically, appellant did not adduce evidence regarding the ownership of the tanker lorry. In the above circumstances, order is set aside with regard to the limited point and the Motor Accident Claims Tribunal is directed to consider the issue whether appellant petitioner was the owner of the tanker lorry at the time of the accident, and if so, what is the amount of damages payable. For that purpose alone matter is remanded. Parties may appear before the Tribunal on 10.9.2007. Both sides are allowed to produce documentary and oral evidence in support of the contentions. Appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.558 OF 2000 (D)

J U D G M E N T

6th July, 2007